

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
The Application by Verizon Maryland Inc.,)	
Verizon Washington, D.C. Inc., Verizon)	
West Virginia Inc., Bell Atlantic Communications,)	WC Docket No. 02-384
Inc. (d/b/a Verizon Long Distance), NYNEX Long)	
Distance Company (d/b/a Verizon Enterprise)	
Solutions), Verizon Global Networks Inc., and)	
Verizon Select Services Inc., for Authorization)	
to Provide In-Region, InterLATA Services)	
in Maryland, Washington, D.C., and West Virginia)	

**COMMENTS OF THE OFFICE OF THE PEOPLE’S COUNSEL
FOR THE DISTRICT OF COLUMBIA ON THE APPLICATION BY
VERIZON MARYLAND, VERIZON WASHINGTON, D.C., AND VERIZON WEST
VIRGINIA FOR AUTHORIZATION TO PROVIDE IN-REGION INTERLATA
SERVICES IN MARYLAND, WASHINGTON, D.C., AND WEST VIRGINIA**

Pursuant to the Federal Communications Commission (“FCC” or “Commission”) Public Notice (“Notice”) issued on December 19, 2002,¹ the Office of the People’s Counsel for the District of Columbia (“OPC-DC” or “Office”) is submitting comments on the joint Application by Verizon Maryland, Verizon Washington, D.C., and Verizon West Virginia for Authorization to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia. As the statutory representative of District of Columbia ratepayers, the Office’s scope of review and comments are limited to the section 271 application filed by Verizon Washington, D.C. Inc. (“Verizon DC”).

¹ In re The Application by Verizon Maryland, Verizon Washington, D.C., and Verizon West Virginia for Authorization to Provide in-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia (AApplication@) WC Docket No. 02-384, DA 02-3511 (rel. Dec. 19, 2002).

I. SUMMARY OF OPC-DC's POSITION

The OPC-DC's concerns regarding Verizon DC's section 271 filing are summarized as follows:

- **Verizon DC failed to satisfy Checklist Items 2, 4, and 5;**
- **Verizon DC failed to establish the presence of sustainable, irreversible local competition in the District of Columbia;**
- **DC PSC has not yet articulated its determination regarding whether Verizon DC's OSS is compatible with other OSS in Verizon's footprint; and**
- **Accordingly, OPC recommends the FCC not approve Verizon's DC's Application for Authorization to Provide In-Region, InterLATA Services in Washington, D.C., as filed.**

II. JURISDICTION

The Office is acting under authority granted by Section 34-804, *et seq.* of the District of Columbia Code to represent the people of the District of Columbia at proceedings before related federal regulatory agencies and commissions when those proceedings involve the interests of users of the products and services furnished by public utilities under the jurisdiction of the Public Service Commission.² The Office's interest in this proceeding is to further the interests of D.C. consumers in reaping the benefits of a vigorous, robust and effective telecommunications market. OPC-DC serves a unique role in this section 271 proceeding. It is the only party that wholly represents the interests of the consumers of the District of Columbia. OPC-DC enters into this case with a different objective than the investor-based motivations of the telecommunications carriers authorized to provide service in the District of Columbia.

Consistent with OPC-DC's statutory mandate to represent the interests of the

² D.C. CODE ANN. § 34-804 (2001).

residential and small business consumers in the District relative to their purchase of telecommunications services, OPC's primary goal in this context is to ensure that the interests and rights of D.C. consumers to receive reliable and affordable local telephone service at just, and reasonable rates are protected. OPC-DC is a proponent of effective and meaningful competitive choices for residential and small business ratepayers resulting in lower and affordable prices in the District of Columbia's telecommunications service market. The Office submits it is critical in the wake of a slowly emerging competitive telecommunications market that District of Columbia ratepayers, particularly residential and small business consumers, are not trampled upon in the waging business war by corporate telecommunications giants.

It has been six years since the passage of the federal Telecommunications Act of 1996 ("Telecommunications Act" or "Act") and virtually no competition has emerged in the residential local exchange market in the District of Columbia.³ It is an undisputed fact that Verizon DC, the incumbent, continues to retain a majority of the market share in the local exchange market in the District of Columbia. Verizon DC's entrance into this once-restricted area will fundamentally change the telecommunications market in the District. Thus, the FCC cannot afford to let Verizon DC into the District of Columbia's long distance market before it ensures District of Columbia ratepayers that Verizon DC has fully demonstrated compliance with the market opening requirements of Section 271 of the Telecommunications Act, as well as, the public interest and structural separations requirements found in section 272 of the federal Act.

³ See, D.C. PSC website www.dcpsc.org/ci/cch/tele/CLECSprovidingsvc.pdf. Although the PSC's website indicates that 29 competitive local exchange carriers provide residential service, OPC-DC researched the listed carriers and only 8 CLECs either currently offer or have plans to serve the

If the federal and state commissions fail, for whatever reason, to properly and reasonably evaluate whether appropriate regulatory safeguards are in place prior to granting Verizon DC approval to provide long distance service in the region, District of Columbia consumers will be faced with having no *effective* choice for local telecommunications service. Such a result is antithetical to the purpose of the federal and state Telecommunications Acts. Thus, as recently reported in the Washington Post, given the FCC's push towards companies competing by building their own facilities and networks, many CLECs have not been able to survive and those that have "don't serve residential customers."⁴ To wit, the Office seeks to ensure that Verizon DC has satisfied, and will continue to satisfy in the foreseeable future, all fourteen of the checklist items, as a means to enhance competition in the District's local exchange market.

III. PROCEDURAL POSTURE OF STATE PROCEEDINGS RELEVANT TO VERIZON DC's SECTION 271 APPLICATION

Although the federal Act does not prescribe the standard by which the Commission should consider a state commission's consultative report, the FCC has consistently reviewed state section 271 proceedings to accord the appropriate weight to a state commission's consultative report. In order to assist the Commission in determining the appropriate probative value to accord the D.C. PSC's consultative report, OPC-DC has provided the FCC a procedural summary of the cases currently before the D.C. Commission. While the Office has not taken exception to the form of the DC PSC's proceedings, OPC-DC contested the brevity of the review period in which parties had the

residential market. More importantly, some carriers do not plan to offer ubiquitous residential service in D.C.

⁴ Jonathan Krim, *FCC Preparing to Overhaul Telecom Media Rules*, WASHINGTON POST, Jan. 3, 2003, at E01. See, also OPC-DC Attach. D, "Communication Companies That Have Withdrawn or Abandoned Applications to Provide Local Exchange Service in the District of Columbia."

opportunity to review, analyze, and comment on Verizon DC's draft compliance filing. (See, OPC-DC Attachment A) More importantly, as discussed below, several pricing issues for unbundled network elements and the resale discount remain unresolved at the state level. Second, the DC PSC has not concluded its review of Verizon DC's operation support systems, and therefore, cannot conclude the Company offers competitive carriers non-discriminatory access to its supporting systems and databases. Accordingly, until these two major issues are resolved, OPC-DC submits the FCC should find that Verizon DC's section 271 application is premature and, therefore, reject its application.

A. Formal Case No. 1011, In the Matter of Verizon Washington DC, Inc.'s Compliance with the Conditions Established in Section 271 of the Federal Telecommunications Act of 1996

The D.C. Commission's review of Verizon DC section 271 application commenced when on June 14, 2002, Verizon DC filed a Petition for Adoption of a Procedural Schedule ("Petition") to review its draft 271-compliance filing. The company indicated its intention to file its application on July 12, 2002.⁵ On June 18, 2002, by Order No. 12426, the DC PSC requested interested parties to file comments on the Company's proposed procedural schedule by June 28, 2002.⁶ OPC-DC filed comments on June 28, 2002, along with other parties. Additional comments were filed by interested parties on July 2, 2002. On July 25, 2002, by Order No. 12450, the DC PSC scheduled a pre-hearing conference to be held on August 5, 2002, to discuss varying procedural schedules proposed by the parties and to determine whether outstanding operation

⁵ Formal Case No. 1011, In re Verizon Washington D.C., Inc.'s Compliance with the Conditions Established in Section 271 of the Federal Telecommunications Act of 1996, Letter to Sanford M. Speight, Esq., Acting Secretary of the Public Service Commission of the District of Columbia from David A. Hill, Vice President & General Counsel of Verizon DC and Verizon DC's Compliance Filing (filed July 12, 2002).

⁶ Formal Case No. 1011, Order No. 12426 (June 18, 2002).

support systems (“OSS”) issues would be discussed in a separate and parallel proceeding.⁷

On August 16, 2002, the Commission issued Order No. 12536 establishing a procedural schedule to review Verizon DC’s section 271 draft compliance filing.⁸

Evidentiary hearings were held on November 19 and 20, 2002. OPC-DC, Verizon DC, AT&T of Washington, D.C. Inc. (“AT&T”), Worldcom, Inc. (“Worldcom”) and Allegiance Telecom appeared in the hearings. OPC-DC filed the testimony of Dr. Lee Selwyn addressing certain checklist items, the public interest standard, and the separate affiliate requirements under 47 U.S.C. § 272. Post-hearing briefs were filed by interested parties on December 6, 2002.

As noted in OPC’s post-hearing brief,⁹ as part of its public interest finding and in order to protect the District’s ratepayers, OPC-DC’s recommendations included, but were not limited to, requesting the Commission to:

- Direct Verizon DC to cease imposing anti-competitive interconnection arrangements on competitive service providers;
- Establish permanent, cost-based, TELRIC compliant unbundled network element rates for Verizon DC, that recognize the recent and on-going decline in costs for Verizon DC's underlying network;
- Require Verizon DC to amend its construction policy and practices for the provisioning of DS1/DS3 unbundled loops and interoffice transport when facilities are not available, so that it no longer discriminates against CLECs in favor of its retail customer; and

⁷ Formal Case No. 1011, Order No. 12450 (July 25, 2002) (The DC PSC concluded that it would consolidate outstanding OSS issues into the section 271 application proceeding and closed Formal Case No. 993.)

⁸ Formal Case No. 1011, Order No. 12536, §§ 28-29 (Aug. 16, 2002).

⁹ Formal Case No. 1011, Post-Hearing Brief of the Office of the People’s Counsel.

- Prohibit Verizon DC from disconnecting a customer's *local* telephone service in the event that the customer fails to pay Verizon long distance charges billed by Verizon DC, *whether or not the Verizon long distance service is provided by the Verizon Long Distance affiliate or by Verizon DC on an integrated basis.*

In the alternative, OPC-DC recommended the D.C. Commission place, at a minimum, the following conditions upon Verizon DC should the DC PSC conclude it would support Verizon DC's section 271 application:

- **Establish** a CLEC-only special access tariff for DS-1 and DS-3 using UNE rates and SGAT terms and conditions, and include a provision allowing competitive LEC's to either connect a UNE to the special access or charge a \$1.00 nominal fee for the special access until it is converted to a UNE.
- Upon request, **require** Verizon DC to provide CLECs with detailed maps and records showing high capacity facilities along the most direct route between the serving wire center and the customer premise; and, at a minimum, two alternative routes if facilities along the most direct route are not immediately available.
- **Disaggregate** PR-3 metric (Completed within Specified Days - No Dispatch) by simple (*i.e.* vertical feature additions) and complex (*i.e.* local loop cut-through) order types, and to affirmatively demonstrate that the Company has been achieving parity over the latest six-month period when those order types are separately analyzed. The Commission should also consider modifying these measurements so that such disaggregation is performed on a going-forward basis.

Unfortunately, in its apparent effort to meet the FCC's deadline, the D.C. Commission will file its consultative report prior to issuing a final order in the state proceeding. Although the FCC has considered other state proceedings in which a final order was not issued, OPC submits parties participating in the local proceeding are at loss in knowing whether or how the D.C. Commission considered the merits of their arguments and recommendations made during the evidentiary proceedings. Therefore, OPC-DC and other participating parties are foreclosed from knowing whether any of the parties' comments, recommendations, and conditions will be incorporated into

the DC PSC's consultative report to the FCC. OPC submits this places the parties in an untenable position and is otherwise administratively inefficient.

B. Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996

On June 3, 1996, the D.C. Commission initiated Formal Case No. 962 to open the local exchange telecommunications market to competition as required in the Federal Telecommunications Act of 1996.¹⁰ Verizon DC filed its statement of generally available terms and conditions ("SGAT") with the D.C. Commission on January 17, 1997.¹¹ Since then, several cost studies, sensitivity runs, and re-runs were filed with the Commission to assist it in establishing first, interim rates for unbundled network elements ("UNEs") and a resale discount, and then permanent rates that are in compliance with the FCC's total element long run incremental cost ("TELRIC") model. Moreover, several FCC rulemakings and court decisions rendered a number of issues moot or were substantially altered as a result of technological developments in the telecommunications marketplace.

Accordingly, on December 21, 2000, the D.C. Commission directed Verizon DC to file new UNE and wholesale discount rate cost studies in Order No. 11861.¹² Verizon DC filed updated cost studies for UNES and the resale discount rate on January 29, 2001,¹³ and subsequently, replaced the January 29 cost study with a new study filed with

¹⁰ Pub. L. 104-104, 110 Stat. 56, *amending* the Communications Act of 1934 (codified in 47 U.S.C. §§ 151 *et. seq.*) (A Telecommunications Act@ or A federal Act@).

¹¹ Formal Case No. 962, In re the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996, Petition of Bell Atlantic-Washington, D.C. Inc. (Jan. 17, 1997).

¹² Formal Case No. 962, Order No. 11861 (rel. Dec. 21, 2000).

¹³ Formal Case No. 962, Overview of Unbundled Network Element Costs and Resale Discount (filed Jan. 29, 2001).

the Commission on July 16, 2001. Interested parties filed comments and rebuttal testimony respectively on October 9, 2001, and January 11, 2002. Subsequently, the Commission ordered OPC-DC, Verizon DC, AT&T, and Covad to file additional sensitivity runs using Commission-specified inputs.

Evidentiary hearings were held on June 3 through 5, 2002. By Order No. 12601, the Commission directed Verizon DC and AT&T to rerun their cost models with Commission-specified inputs and to file their results by November 26, 2002.¹⁴ On December 6, 2002, in Order No. 12610, the Commission established permanent rates for UNEs and the resale discount rate. On December 26, 2002, challenging the D.C. Commission's permanent UNE and resale discount rates, Verizon DC informed the DC PSC that it will not use the Commission-approved rates in its section 271 application filed with the FCC. Instead, Verizon DC unilaterally decided that during the pendency of any stays of Order No. 12610 it would "offer CLECs a set of TELRIC-compliant interim rates that either were in effect prior to the December 6 order or at levels benchmarked to the TELRIC-compliant rates in New York – whichever is lower." Thereafter, on January 2, 2003, AT&T filed a letter with the D.C. Commission protesting Verizon DC's decision not to use the D.C. Commission-approved UNE and resale discount rates.

On January 3, 2003, Verizon DC filed an Application for Partial Reconsideration and Clarification of Order No. 12610 contending that the UNE rates adopted by the DC PSC were not TELRIC-compliant and in effect, violate the Takings Clause of the Constitution. By operation of state law, Verizon DC's Application for Reconsideration stays the Commission Order No. 12610 and, therefore, places into effect interim UNE

¹⁴ Formal Case No 962, Order No. 12601 (Nov. 18, 2001).

and resale discount rates that were in effect prior to the issuance of the D.C.

Commission's Order No. 12610.

On January 6, 2003, OPC-DC filed an Application for Reconsideration maintaining that the D.C. Commission's decision is not based on substantial evidence and urged it to modify its decision in at least two areas. First, the cost of the loop should be allocated equally between voice and data services since they are common costs.¹⁵ More importantly as stated in D.C. Commissioner Rachal's dissenting opinion "[r]etail customers have already paid for these costs.... [r]eal going-forward costs should not be provided free to CLECs. This results in a windfall without any rate adjustment or financial benefit being passed on to the ratepayers....[t]he double-recovery sought to be avoided is just passed onto a different party equally not entitled to recovery."¹⁶ Second, due to significant flaws in Verizon DC's resale discount cost study, the Commission should establish a new interim rate and order new resale cost studies from Verizon DC.¹⁷ AT&T also filed an Application for Partial Reconsideration with the D.C. Commission on January 6, 2003.¹⁸ AT&T generally supports the UNE rates adopted by the DC PSC, however, it believed six areas did not comport with forward-looking TELRIC principles or otherwise need adjustment and, requested the D.C. Commission to modify its order.¹⁹

The D.C. Commission has not taken the Company's recent actions lightly. In its

¹⁵ Formal Case No. 962, Direct Testimony and Exhibits of the Office of the People's Counsel for the District of Columbia, (Attached to this pleading as "OPC-DC Attach. C") at 41-48 (Oct. 9, 2001).

¹⁶ Formal Case No. 962, Order No. 12610, Dissent of Commissioner Anthony M. Rachal, III. (Dec. 6, 2002).

¹⁷ Formal Case No. 962, Application for Reconsideration of the Office of the People's Counsel, (filed Jan. 6, 2003).

¹⁸ Formal Case No. 962, AT&T DC Application for Reconsideration at 1 (Jan. 6, 2003).

¹⁹ *Id.*

most recent order, Order No. 12626, issued January 6, 2003, the D.C. Commission prohibited Verizon DC from using New York UNE rates, benchmarked or otherwise, which it expressly rejected in Order No. 12610.²⁰ The D.C. Commission cautioned Verizon DC that “any attempt by Verizon DC to flout an Order of the Commission, either in whole or in part, may constitute sufficient reason to recommend to the FCC that the Company’s section 271 application be denied.”²¹ As of the date of this filing, the D.C. Commission has not rendered a decision has not been rendered on the applications for reconsideration.

C. Formal Case No. 993, In the Matter of Operations Support Systems Testing in the District

On June 14, 2000, the D.C. Commission initiated Formal Case No. 993 to investigate and implement testing of Verizon DC’s (formerly, Bell Atlantic-Washington, D.C. Inc) OSS. By Order No. 11819, the DC PSC decided to participate in a multi-jurisdictional OSS comparability study with Maryland and West Virginia and, then incorporate its draft scope of work into the Virginia State Corporation Commission and KPMG Peat Marwick’s (“KPMG”) OSS Master Test Plan.²² On May 15, 2001, the parties met with KPMG Consulting to ask questions on the draft final report. No further action has taken place. Although the D.C. PSC consolidated OSS issues into the state section 271 proceeding, the D.C. PSC has not made an independent finding whether Verizon DC’s OSS is the same as other OSS in neighboring Verizon jurisdictions or

²⁰ Formal Case No. 962, Order No. 12626 (Jan. 6, 2003).

²¹ *Id.* at 6.

²² Formal Case No. 993, In re Operations Support Systems Testing in the District, Order No. 11819 (Oct. 20, 2000).

whether District-specific testing is necessary as of the date of this filing.

IV. ARGUMENT

A. Without Full and Complete Compliance with Section 271(c) Competitive Checklist a Truly Competitive Local Market Will Never Emerge in the District to the Detriment of Consumers.

1. Checklist Item 2– Verizon DC Has Failed to Demonstrate That it Provides Interconnection in Accordance with the Requirements of Sections 252(c)(2) and 252(d)(1) of the Act

a. Verizon DC Has Not Provided Credible Evidence Demonstrating that it Provides Nondiscriminatory Access to OSS or that its ExpressTRAK System is Fully Operational in the District of Columbia

OPC DC submits the D.C. Commission was not presented sufficient evidence to conclude that 1) Verizon DC offers nondiscriminatory access to OSS and 2) a key component of Verizon DC's OSS, the ExpressTrak billing system, is operationally ready and working at an acceptable level of quality in the District.

a. KPMG's OSS Evaluation Report Does Not Accurately Compare the Similarities and/or Differences Between Verizon Virginia OSS and the District of Columbia

Verizon DC relies on third party testing of its OSS conducted by KPMG Consulting to demonstrate that it provides nondiscriminatory access to network elements.²³ OPC submits KPMG's report comparing the similarities and/or differences between Verizon Virginia and D.C. OSS are inconclusive and, therefore, do not obviate the need for District-specific testing. KPMG's testing falls short of accurately depicting the volume of business transactions an incumbent and the CLECs conducted on a daily basis. KPMG admits, as it must, that certain tests, representative of an entire CLEC marketplace, was much broader than that likely to be experienced in the near future by an

²³ Formal Case No. 1011, Verizon DC OSS Decl. ("OSS Declaration"), ¶ 17.

single CLEC.²⁴ However, the test was not intended to be exhaustive because it is neither feasible nor desirable to test all permutations and combinations of all features and functions across all offered products.²⁵ Moreover, KPMG's testing process excluded certain orders such as, complex orders, orders with long interval periods, large volumes of test transactions that would exceed the manual capacity of Verizon Virginia's Work Centers.²⁶ In many instances, KPMG did not generate any data or conduct volume testing in its testing process.²⁷ Verizon's Wholesale Customer Care Center ("WCCC") is the primary point of contact for CLECs experiencing system access issues.²⁸ KPMG's evaluation methods and sources of data relied solely upon Verizon WCCC personnel and handbooks, excluding interviews with CLEC personnel.²⁹ Throughout, KPMG's report, the consultants primarily relied upon discussions with Verizon personnel. Such a biased review can only result in a favorable review of Verizon's OSS processes.

b. Verizon DC's Reliance on New Wholesale Billing System, ExpressTRAK Requires Additional Performance Measures to Ensure Nondiscriminatory Access to the Verizon OSS

c.

Second, the Verizon DC application presents a new ordering and billing system, known as "ExpressTRAK," that has never before been examined, let alone approved, by the FCC in connection with review of any Verizon section 271 application.³⁰ Moreover,

²⁴ Verizon Virginia State Corporation Commission, KPMG Consulting, Inc. OSS Evaluation Project, Final Report, Version 2.0 **CONFIDENTIAL** (Apr. 15, 2002); *see, also* Formal Case No. 1011, Verizon OSS Decl.

²⁵ *Id.*

²⁶ *Id.* at ' II, p. 16.

²⁷ *Id.* at ' III, p. 47 (Discussion of the Wholesale Customer Care Center (AWCCC@) Escalation Process.)

²⁸ *Id.* at ' 2.1, Business Process Description.

²⁹ *Id.* at ' 2.4 through 2.6.

³⁰ Formal Case No. 1011, OPC-DC Affidavits and Exhibits of the Office of the People's Counsel for the District of Columbia, OPC Exh. B (Attached to this pleading as "OPC-DC Attach. B").

because the ExpressTRAK system is not yet fully implemented in Virginia or Maryland, the Commission cannot rely upon commercial experience with the system in those jurisdictions.³¹

As noted in OPC's post-hearing brief, Verizon DC presented the Commission with unreliable evidence enabling the D.C. PSC to confirm that ExpressTRAK is functioning with minimum errors and is rendering wholesale bills in an accurate manner.³²

2. Checklist Item 4 – Verizon DC Has Failed to Demonstrate That It Provides Local Loop Transmission from the Central Office to the Customer's Premises, Unbundled from Local Switching or Other Services; and

Checklist Item 5 – Verizon DC Has Failed to Demonstrate That It Provides Local Transport from the Trunk Side of a Wireline Local Exchange Carrier Switch Unbundled from Switching or Other Services.

a. Verizon DC's Construction Policy and Practices for Digital DS1 and DS3 Facilities Fail to Comply With the Statutory requirements of Checklist Items 4 and 5.

OPC presented credible evidence to the D.C. Commission proving that Verizon DC's construction policy and practices discriminate against CLECs in the provisioning of DS1/DS3 unbundled loops and interoffice transport when facilities are not immediately available within Verizon DC's network.

Verizon DC established a region-wide policy under which it routinely rejects UNE orders for DS1 and DS3's when facilities do not exist but fulfills such orders by constructing new facilities when a retail customer orders the same service at the same

³¹ *Id.*, at 23.

³² *See, supra* n.7.

location.³³ This policy appears to lead to a significant number of orders that are rejected as available to meet demand, and the costs associated with this plant are included in the TELRIC-base rates. Verizon's "no facilities" policy appears at odds with the development of TELRIC models because it appears to adopt a short-run assumption that no new plant is constructed to meet demand from CLEC's."³⁴

According to Allegiance Telecom's testimony before the D.C. PSC, Verizon DC's policy has resulted in a 30-40% rejection rate of UNE DS 1 orders and is "killing" the company's ability to provide a high-speed integrated voice/data product to its customers.³⁵ As a result, Allegiance has been the target of lawsuits and has lost customers because it cannot provide timely service.³⁶ In contrast to other RBOCs' construction policies that include splicing wires, installing repeater shelves and apparatus cases on a regular basis, Verizon asserts such work constitutes "construction" and, thus refuses to process UNE orders.³⁷

Although the FCC has held ILECs are not necessarily obligated to construct new facilities for the purpose of providing UNEs, OPC presented evidence to the D.C. Commission clearly indicating the Company's construction policy potentially discriminates against competing carriers as a substantial percentage of UNE DS1 service orders are rejected for "no available facilities."³⁸ To reduce the harmful effects of Verizon DC's policy, OPC-DC presented the D.C. Commission with several conditions implemented within Verizon's footprint that can similarly be placed upon Verizon DC's

³³ Formal Case No. 1011, OPC Ex. B at 36. (Attached to this pleading as "OPC Attachment B", citing Verizon DC Checklist Decl., ¶¶ 174-200); Hr'g Tr. at 165, lines 17-21.

³⁴ OPC-DC Attach. B, (Lundquist Aff. at 36).

³⁵ Hr'g Tr. at 186, lines 18-21.

³⁶ *Id.* at 188, lines 7-22.

³⁷ Hr'g Tr. at 184, lines 14-22, 185-88.

³⁸ *See*, OPC-DC Attach. B, (Lundquist Aff., at 36).

271 application.³⁹ For example, in New Hampshire, the Public Utilities Commission conditioned its endorsement on, *inter alia*, Verizon-New Hampshire creating a “competitive LEC-only intrastate special access tariff for DS1 and DS3 using UNE rates and SGAT terms and conditions, and include a provision allowing competitive LEC’s to either connect a UNE to the special access or charge \$1.00 for the special access until it is converted to a UNE.”⁴⁰ Making DS1 and DS3 facilities available under a CLEC-only special access tariff at TELRIC rates will reduce Verizon DC’s ability to discriminate against CLECs by requiring the Company to augment its facilities, when such facilities are not immediately available, in the same manner as the Company augments its facilities for special access customers. As a result of this proposed condition, the time necessary to build new facilities would be identical for retail customers ordering service from a competing carrier or directly from Verizon DC. Other state commissions have approved similar conditions in approving Section 271 applications.

In Maine, the Commission conditioned its endorsement of Verizon-Maine’s 271 application on, *inter alia*, the Company making a series of changes in the provisioning of dark fiber facilities, conditions that are just as applicable to the provision of DS1 and DS3 UNEs over copper.⁴¹ Under Maine’s conditions, CLEC’s have, at a minimum, the opportunity to determine if they should submit additional UNE orders allowing them to utilize alternative routes to serve the customer or postpone service delivery until Verizon DC completes construction along the route.⁴²

³⁹ See, OPC-DC Attach. B, at 39-40.

⁴⁰ In re Application of Verizon New England, Inc., Verizon Delaware, Inc., Bell Atlantic Communications, Inc. (d/b/a/ Verizon Long Distance), NYNEX Long Distance Co. (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware, WC Docket No. 02-157, Opinion and Order n.10 (Sept. 25, 2002).

⁴¹ *Supra*, n.38.

⁴² *Id.*

Unless the FCC requires Verizon DC to eliminate its “no facilities” policy, the DC Commission will unwittingly allow Verizon DC to recover costs through special access rates for those short-term investments (assuming maximum utilization of plant facilities), as opposed to the more appropriate long-run incremental costs the FCC’s TELRIC model mandates, and which assumes that a level of spare capacity has been set aside to satisfy future demand in network elements.

3. Checklist Item 4: Verizon DC's Reported Intervals for Non-Dispatch Installations Are Significantly Longer for CLEC Orders than for its Own Retail Orders, and Verizon DC's Performance in this Area Should Be Closely Scrutinized by the Commission to Ensure That the Company Is Not Discriminating Against CLECs

One of the most important demonstrations that Verizon DC must make in order to be rewarded with Section 271 approval is to show that it provisions CLEC orders in a timely and non-discriminatory manner.

Using the data provided in Verizon DC’s filing with the D.C. PSC (which spanned the months February through April 2002), Verizon DC failed the PR-3, No Dispatch test four times out of twelve in the resale category, and six out of twelve times in the UNE category.⁴³ Further analysis of the PR-3 data shows that Verizon DC generally appears to be installing “No dispatch” services for its own retail customers in a more timely manner than it installs “No dispatch” resale and UNE lines for its competitors.⁴⁴ Based on the measurement results in the record, one cannot conclude that Verizon DC is compliant with Checklist Items 4 in this respect.

The evidence presented to the D.C. Commission and, now to the FCC clearly

⁴³ The PR-3 performance metric is reported separately for Retail services, Resold services (POTS and Special Services combined) and UNE services, and is disaggregated for services requiring a Dispatch (*i.e.*, a customer premises visit by a Verizon technician) versus those with No Dispatch required. OPC-DC Attach. B (Lundquist Aff. at 25).

⁴⁴ *Id.* at 27-29.

proves that Verizon DC has not complied with Checklist Items 2, 4, and 5. Accordingly, OPC-DC requests the FCC reject Verizon DC's section 271 application until the Company demonstrates that it has fully complied with its statutory mandates under the federal Act.

B. Permitting Verizon DC to Offer In-Region Long Distance Service is Not Consistent with the Public Interest, Convenience and Necessity.

1. Verizon DC Has Failed to Establish the Presence of Sustainable, *Irreversible* Local Competition In the District of Columbia.

a. Verizon DC Misrepresents the True State of Competition in the District of Columbia

The record before the DC PSC clearly establishes that the District's incumbent local exchange competitive market conditions in the District of Columbia fall far short of the Department of Justice's requirement that the market be *irreversibly* open to competition. Verizon DC is unable to make a showing regarding the presence of sustainable, irreversible local competition.⁴⁵

b. E911 Data is Not An Accurate Indicator of the Status of Competition in the District of Columbia

For example, Verizon DC provides evidence of CLEC activity by submitting counts of resold lines, unbundled loops, and UNE-Platform ("UNE-P") facilities, each of which is commonly tracked and reported data.⁴⁶ However, the Company seeks to further substantiate CLEC presence in local markets by providing a count of E911 listings as evidence of "facilities-based" CLEC lines.⁴⁷ Verizon DC's portrayal of this data as a

⁴⁵ In re Application of SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Oklahoma, CC Docket No. 97-121, Evaluation of the United States Department of Justice at 41 (May 16, 1997).

⁴⁶ Formal Case No. 1011, Decl. of Marie C. Johns (Proprietary Version) at 3-4 (July 12, 2002).

⁴⁷ Formal Case No. 1011, Verizon DC Ex. A, ¶ 6.

“conservative estimate” is unsubstantiated. CLECs are not required to report E911 listings to Verizon DC for input into the E911 database in the same manner as that employed by Verizon DC, and to assume that they do for the purposes of identifying lines served by competitive carriers is disingenuous at best. The reporting practices of some carriers, such as AT&T, support the notion that E911 listings grossly *overstate* the number of lines served by CLECs.⁴⁸ Indeed, an examination of Verizon DC’s own reporting practices demonstrates that the quantity of E911 listings exceed by **BEGIN PROPRIETARY <<*****>> END PROPRIETARY** the Company’s own count of access lines in service.⁴⁹ Given that CLECs tend to serve proportionally fewer residential access lines as compared with Verizon DC, any excess of E911 number listings to actual voice-grade lines is likely far greater in the case of CLECs than it would be for Verizon DC.⁵⁰ Moreover, in the proceeding before the DCPSC, AT&T successfully challenged Verizon DC’s assertion that AT&T provides UNE-P residential service in the District of Columbia.⁵¹

c. Collocation Agreements Are Not An Accurate Indicator of the Status of Competition in the District of Columbia

In addition to unsupported data used to measure CLEC facilities-based lines, Verizon DC seeks to emphasize the 150 “existing in-service collocation arrangements” entered into by CLECs with Verizon DC as sufficient evidence of current (and indicative of future) competitive presence throughout the District.⁵² However, any attempt by

⁴⁸ OPC-DC noted that AT&T stated it submits every telephone number behind a PBX switch, including Direct Inward Dial numbers, to the incumbent carrier for inclusion in the E911 database, which would create a gross discrepancy between the number of listings in the E911 database and the number of access lines served by the carrier. OPC-DC Attach. B, (Selwyn Aff. at 19-20).

⁴⁹ OPC-DC Attach. B (Selwyn Aff. at 19-20).

⁵⁰ *Id.* at 20.

⁵¹ *Id.*

⁵² Formal Case No. 1011, Verizon DC Ex. A, ¶ 5.

Verizon DC to measure “potential” competition in the District by counting the number of collocation arrangements it has entered into with CLECs must also serve as a measurement of the numerous CLECs with collocation arrangements that are experiencing difficulty staying in business. Indeed, the quantity of “in-service” collocation arrangements has been dropping since the date on which Verizon DC filed its application with the DC PSC. For example, of the 109 traditional physical collocation arrangements in existence in April 2002, only 70 were still in use in July 2002 – a drop of 36% in just three months.⁵³ The quantity of virtual collocation and Competitive Alternate Transport Terminal (“CATT”) arrangements also dropped over that time period. And these decreases in collocation arrangements do not even account for the recent bankruptcies announced by Adelphia, XO Communications, ATG and WorldCom since July 2002.⁵⁴

Additionally, Verizon DC made no attempt at identifying how many of the 150 “in-service collocation arrangements” were associated with data CLECs. According to the FCC, data is not a competing service in terms of Track A compliance. In the *Bell South Georgia/Louisiana Order II*, the FCC specifically noted that it *excluded* estimates of data services provided by CLECs for its analysis of BellSouth’s compliance with Track A in Georgia. Therefore, to the extent that Verizon DC’s calculations include the number of its collocation arrangements with data providers, the results are flawed and unreliable.

An analysis performed by OPC-DC calculated a drop in market capitalization of about 86% for a broad group of CLECs over the past 3 years.⁵⁵ Thus, the general state of

⁵³ Formal Case No. 1011, OPC-DC Attach. B (Selwyn Aff. at 22).

⁵⁴ *Id.*

⁵⁵ *Id.*

the CLEC market points to a decline in their ability to effectively compete with Verizon DC, precisely the opposite conclusion advanced by Verizon DC.

2. The Record Before the DC PSC Reflects That Granting Premature 271 Approval to Verizon DC Prior to the Development of an Irreversibly Competitive and Economically Viable Telecommunications Market Will Expose Consumers and Competitors in the District to Several Serious Risks.

As OPC-DC has shown, Verizon DC has not met its burden of proof in demonstrating the presence of effective, price-constraining competition in the District that would permit the Commission to find that Verizon DC's entry into the in-region long distance market is "consistent with the public interest, convenience and necessity."

Granting premature 271 approval to Verizon DC prior to the development of effective, price constraining competition in the local service market would expose consumers and competitors in the District to several serious risks:

- The strong likelihood that in the District, as in other Verizon in-region areas, Verizon DC will engage in anti-competitive behavior using its local monopoly legacy customer base to cross-subsidize its long distance offerings;
- The risk that Verizon DC will be able to utilize its joint marketing relationship to extend its local monopoly into the adjacent long distance market, thus *reducing* the level of competition that presently prevails with respect to long distance service;
- The risk that the Company may "backslide" in its efforts to open its market to competition, thereby, slowing or reversing altogether the market-opening measures it had pursued in order to satisfy the Section 271(c)(2)(B) "competitive checklist."⁵⁶

The likely results of a premature Section 271 approval would be to (1) discourage future entry into the local market in the District; (2) perpetuate a general exodus by existing CLECs and long distance providers from their respective markets; (3) pave the road for re-monopolization of the long distance market by Verizon DC, and (4) set in motion the process for an increase in both local and long distance prices.

C. Section 272 Review and Compliance by this Commission is Appropriate to Ensure Adherence to the Public Interest Standard

1. The Record Before the DC PSC Reflects That Verizon DC Has Structured its Operation That Simulates Full Integration and Results In A Shift of Costs to the BOC And Its Ratepayers.

Verizon DC has refused to provide any information that would permit the DC PSC to analyze its planned 272 compliance, let alone make a determination regarding that plan. The Commission should find it instructive that in each of the states in which Verizon has attained in-region entry and *notwithstanding the specific statutory requirement that its in-region long distance services be provided by an affiliate structurally separated from the BOC*, Verizon has nevertheless structured its local and long distance operations in an effectively integrated basis. Although Section 272 requires structural separation of the BOC and its Section 272 affiliate for the first 3 years following interLATA authority (unless further extended by the FCC),⁵⁷ Verizon consistently operates in a manner that simulates full integration. Transactions between the affiliates are structured to shift the majority of costs to the BOC and their ratepayers, in direct violation of the FCC's accounting rules.⁵⁸ Verizon DC has indicated that, upon approval to provide long distance services, it will operate its long distance affiliate in the same manner in which the parent corporation, Verizon, operates its long distance affiliates in other states where Verizon has obtained Section 271 authority.⁵⁹ Parallels between the Bell System divestiture and Section 272 provide strong reason for this Commission to read Section 272 as requiring stronger structural separation requirements than the kind of facial compliance that Verizon DC has proposed in other states. Had

⁵⁶ *Id.*

⁵⁷ In re of Section 271(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112, *Notice of Proposed Rulemaking*, 17 FCC Rcd 9916 (2002).

⁵⁸ OPC-DC Attach. B at 42-75.

⁵⁹ *Id.* at 45-46.

Congress or the FCC intended Section 272 to be a weak set of accounting requirements allowing full functional integration, it would not have indicated that such requirements should have similar effects as those provided for in the Bell System divestiture. In addition, in his testimony OPC-DC witness Dr. Selwyn referenced Verizon DC's unheralded position before the FCC regarding the "sunset" provision of section 272 of the *Act*.⁶⁰ Verizon interprets the section 272(f) 3-year sunset provision to apply on an "all or nothing" basis, such that if the separate affiliate requirements are permitted to sunset in New York (the first Verizon state to be granted long distance authority), then the separate affiliate requirements and safeguards identified in Section 272 would cease to apply in all Verizon states after December 2002, even in those regions where Verizon has not yet received in-region interlata authority, that would obviously include Verizon DC.⁶¹ As such, the commission would lose a valuable tool for exposing cross-subsidization and other anti-competitive activities.

Unless Verizon DC agrees to comply in a meaningful way with Section 272, and shares with this Commission the details behind compliance, the Commission should find that the requested authorization poses serious risks to the public interest and, therefore, should be denied.

V. RECOMMENDATIONS

The road to opening the local exchange telecommunications market in the District of Columbia has been a long and arduous process that OPC-DC submits is not yet complete. In this proceeding, as in others, OPC-DC's foremost goal is to preserve and protect residential ratepayers' interests in the reliable, affordable, universally and equitably available service in the local exchange market. District of Columbia consumers require a high level of quality of service without absorbing additional service charges.

⁶⁰ *Id.* at 38-39.

⁶¹ *Id.* at 38.

Inexplicably, Verizon DC failed to present adequate evidence via its 271 application to enable the PSC to reasonably conclude that a grant of authority to Verizon DC to enter the District's long distance market is in the public interest of District of Columbia consumers. More importantly, as discussed above, numerous complex pricing issues intricately related to the state section 271 proceeding remain unresolved. Thus, OPC-DC submits it is unreasonable to begin reviewing Verizon DC's application pending before the FCC. Consequently, OPC-DC respectfully requests this Commission to reject Verizon DC's 271 application unless, and until, the Company fully complies with the statutory checklist requirements under Section 271(c), and until the D.C. Commission establishes permanent unbundled network elements and resale discount rates that are compliant with TELRIC.

WHEREFORE, for the foregoing reasons, OPC-DC urges the Commission to deny Verizon DC's Section application, as filed.

Respectfully submitted,

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